

STATE OF MICHIGAN
COURT OF APPEALS

In re K. SINCLAIR, Minor.

UNPUBLISHED
November 20, 2014

No. 320547
Calhoun Circuit Court
Family Division
LC No. 2012-000655-NA

Before: O'CONNELL, P.J., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right the January 30, 2014, order terminating his parental rights to his daughter, KS, pursuant to MCL 712A.19b(3)(a)(ii) (parent deserted the child for 91 or more days), (c)(ii) (other conditions exist that could have caused the child to come within the court's jurisdiction and they have not been rectified), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood child will be harmed if returned to parent).¹ We affirm.

We review the trial court's "decision that a ground for termination has been proven by clear and convincing evidence" for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012) (internal citations and quotation marks omitted). The trial court's findings are only set aside if the appellate court "is left with the definite and firm conviction that a mistake has been made." *Id.* at 41 (internal quotation marks omitted). "Only one statutory ground need be established by clear and convincing evidence to terminate a respondent's parental rights, even if the court erroneously found sufficient evidence under other statutory grounds." *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011).

The trial court terminated respondent's parental rights to KS under MCL 712A.19b(3)(g), which provides for termination when:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

¹ KS's biological mother's parental rights were also terminated during the same proceedings. However, she has not appealed the order terminating her parental rights to KS.

Here, the record shows that respondent was unable to provide proper care and custody to KS when she was taken into care because he was mentally unstable, had attempted to place KS up for adoption with a family that he did not know very well, and had failed to provide her with a stable living environment.² Further, our review of the record shows that respondent was unable to provide proper care and custody at the time of termination because he lacked appropriate housing, was unemployed, and was incarcerated and awaiting trial on charges that he had sexually abused KS.³

The record also shows that there was no reasonable expectation that respondent could provide proper care and custody within a reasonable time considering KS's age. KS was under the age of seven and had already been in care for 22 months. Although respondent had been provided with supervised parenting time and a psychological evaluation, respondent's participation with the services was minimal. A Department of Human Services (DHS) caseworker testified that to the best of her knowledge, respondent "would come for some visits and then he would disappear to Cambodia" for a while before returning. Further, respondent's former attorney, Violet Hinton,⁴ agreed that DHS reported that visits between respondent and KS were "sporadic." Hinton testified that the reason for the sporadic visits was because respondent was being prevented from seeing KS; however, she agreed that the DHS reports showed that respondent was missing scheduled visits of his own volition. In addition, respondent had two psychological evaluations. The first was conducted by Dr. Randall Haugen on April 18, 2012. Dr. Haugen diagnosed respondent with delusional disorder persecutory type, neglect of child, and adjustment disorder with mixed anxiety and depressed mood. He also reported that respondent had poor coping skills. Dr. Haugen recommended that respondent receive "[a] psychiatric consult for ongoing assessment, clarification of symptom patterns/diagnosis, and psychiatric intervention." He also recommended that a cognitive behavioral intervention

² In March of 2012, petitioner requested the court to take jurisdiction over KS because of serious concerns about respondent's mental health. Specifically, it was alleged that respondent was hearing Cambodian voices over the radio and the drive-through speakers at McDonald's. It was also alleged that respondent believed KS had a tracking chip in her ear. Further, respondent apparently reported that "the Cambodians" were after him because of threats he made to the police and other governmental officials in Cambodia. Finally, it was also alleged that respondent left KS with a family that was supposed to adopt KS, even though he had limited knowledge of the family. The trial court took jurisdiction over KS following a jury trial during the adjudicative phase.

³ In regard to his incarceration, the evidence established that at the time of the termination hearing respondent was incarcerated on charges that he had sexually abused KS. Because of his incarceration, respondent was not allowed to have contact with KS. Further, the Department of Human Services (DHS) contacted the Monroe County Jail, where respondent was incarcerated, inquiring about the availability of services for respondent during his incarceration. The DHS worker was informed that the jail does not provide any type of parenting classes.

⁴ Respondent waived attorney/client privilege with Hinton so that she could testify on his behalf at the termination hearing.

possibly be attempted. He reported that it was important for respondent to identify and challenge maladaptive thinking that could impede his ability to parent effectively. At the adjudicative trial, Dr. Haugen testified that respondent's belief system and "structure [] could cause harm to [KS] if" it was not addressed. Dr. Haugen opined that KS could "reattach" to father if "therapy happened intensively and he responded to it." However, at the termination hearing, Hinton agreed that respondent did not feel as if he had any mental health issues and did not agree with Dr. Haugen's assessment. Respondent received a second psychological evaluation, from Dr. Robert Griffith, who disagreed with Dr. Haugen's diagnosis of delusional disorder; however, he also recommended respondent "tune up" his parenting skills by attending a parenting class and recommended that respondent see a counselor or a life coach to help him make independent decisions. Again, the testimony was that respondent only participated minimally in services and that there was no benefit that the DHS worker could see. At the time of termination, respondent was unable to participate in services because of his incarceration on charges that he had sexually abused KS. On this record, we cannot say that the trial court erred. Because only one statutory ground for termination need be established, *In re Ellis*, 294 Mich App at 32, respondent's arguments regarding the other statutory grounds are moot and will not be considered.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Moss Minors*, 301 Mich App 76, 90; 836 NW2d 182 (2013). "In deciding whether termination is in the child's best interests, the court may consider the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 41-42 (internal citations omitted).

Here, respondent argues because there was a bond between him and KS, the trial court erred in finding that it was in her best interests to terminate his parental rights. However, the trial court found that termination of respondent's parental rights was in KS's best interests because of her need for permanency and stability. The court also considered that she was doing very well in her current placement and making significant progress in her education and counseling. The court also considered respondent's circumstances at the time of the termination hearing. Respondent was incarcerated on charges that he sexually abused KS. He lacked appropriate housing. He lacked employment. His mental health issues had not been remedied. He had only participated minimally in services. On these facts, the trial court did not clearly err in finding that termination of respondent's parental rights was in KS's best interests.

Affirmed.

/s/ Peter D. O'Connell
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood